

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUCY W KAIRU,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 2:22-cv-00154-BJR

UNITED STATES' ANSWER TO
COMPLAINT

Defendant United States of America, by and through its attorneys, Nicholas W. Brown, United States Attorney for the Western District of Washington, and Whitney Passmore, Assistant United States Attorney, hereby answers the Complaint filed by Lucy W. Kairu (hereafter, "Plaintiff"), as follows:

1. IDENTIFICATION OF PLAINTIFF

[Unnumbered paragraph] Defendant is without sufficient information to admit or deny the allegations in this paragraph and therefore denies them.

2. IDENTIFICATION OF DEFENDANT

2.1 Defendant admits only that Sea Mar Community Health Centers is a medical facility in Washington State that employs physicians, nurses, and other health care providers who

1 provide medical care to residents of Washington State. Defendant further admits that Sea Mar
2 employees may be deemed to be employees of the Public Health Service under the Federally
3 Supported Health Centers Assistance Act, 42 U.S.C. § 233(g), for purposes of medical malpractice
4 claims and that such claims are governed by the Federal Tort Claims Act. Except as expressly
5 admitted, the allegations in Paragraph 2.1 are denied.

6 2.2 Defendant admits Plaintiff received care at Sea Mar by employees acting within the
7 course and scope of their employment. Defendant further admits that employees providing medical
8 care to Plaintiff are deemed to be employees of the Public Health Service. Except as expressly
9 admitted, the allegations in Paragraph 2.2 are denied.

10 2.3 The allegations of Paragraph 2.3 are legal conclusions to which no response is
11 required. To the extent a response is required, Defendant states that the law of Washington speaks
12 for itself and its application to the facts of this case will be determined by the Federal District
13 Court.

14 3. JURISDICTION AND VENUE

15 3.1 Admitted.

16 3.2 Admitted.

17 3.3 Admitted.

18 3.4 Admitted.

19 3.5 Admitted.

20 3.6 Defendant admits only that Plaintiff has administratively exhausted those claims
21 set forth in the SF-95s received by Health and Human Services on April 27, 2020. Except as
22 expressly admitted, the allegations in Paragraph 3.6 are denied.

23 4. STATEMENT OF FACTS

24 4.1 Admitted.

1 4.2 Admitted.

2 4.3 Admitted.

3 4.4 Admitted.

4 4.5 Admitted.

5 4.6 Admitted.

6 4.7 Admitted.

7 4.8 Admitted.

8 4.9 Admitted.

9 4.10 Admitted.

10 4.11 Admitted.

11 4.12 Admitted.

12 4.13 Admitted.

13 4.14 Admitted.

14 4.15 To the extent Plaintiff attempts to summarize the content of the medical records,
15 Defendant admits only that the medical records speak for themselves as to their content and
16 specifically denies any allegations in the Complaint inconsistent with the content of the
17 authenticated medical records.

18 4.16 To the extent Plaintiff attempts to summarize the content of the medical records,
19 Defendant admits only that the medical records speak for themselves as to their content and
20 specifically denies any allegations in the Complaint inconsistent with the content of the
21 authenticated medical records.

22 4.17 To the extent Plaintiff attempts to summarize the content of the medical records,
23 Defendant admits only that the medical records speak for themselves as to their content and
24

1 specifically denies any allegations in the Complaint inconsistent with the content of the
2 authenticated medical records.

3 4.18 To the extent Plaintiff attempts to summarize the content of the medical records,
4 Defendant admits only that the medical records speak for themselves as to their content and
5 specifically denies any allegations in the Complaint inconsistent with the content of the
6 authenticated medical records.

7 4.19 To the extent Plaintiff attempts to summarize the content of the medical records,
8 Defendant admits only that the medical records speak for themselves as to their content and
9 specifically denies any allegations in the Complaint inconsistent with the content of the
10 authenticated medical records.

11 4.20 To the extent Plaintiff attempts to summarize the content of the medical records,
12 Defendant admits only that the medical records speak for themselves as to their content and
13 specifically denies any allegations in the Complaint inconsistent with the content of the
14 authenticated medical records.

15 4.21 To the extent Plaintiff attempts to summarize the content of the medical records,
16 Defendant admits only that the medical records speak for themselves as to their content and
17 specifically denies any allegations in the Complaint inconsistent with the content of the
18 authenticated medical records.

19 4.22 To the extent Plaintiff attempts to summarize the content of the medical records,
20 Defendant admits only that the medical records speak for themselves as to their content and
21 specifically denies any allegations in the Complaint inconsistent with the content of the
22 authenticated medical records.

23 4.23 To the extent Plaintiff attempts to summarize the content of the medical records,
24 Defendant admits only that the medical records speak for themselves as to their content and

1 specifically denies any allegations in the Complaint inconsistent with the content of the
2 authenticated medical records.

3 4.24 Defendant is without sufficient information to admit or deny the allegations in this
4 paragraph and therefore denies them.

5 **5. DATE OF OCCURRENCE**

6 5.1 Defendant admits that Plaintiff's allegations center on care received by between
7 October 2018 and March 2019. Except as explicitly admitted, the allegations in Paragraph 5.1 are
8 denied.

9 5.2 The allegations of Paragraph 5.2 are legal conclusions to which no response is
10 required. To the extent a response is required, Defendant is without sufficient information to admit
11 or deny the allegations in this paragraph and therefore denies them.

12 5.3 Admitted.

13 5.4 Admitted.

14 5.5 Defendant admits only that at the time Plaintiff filed her Complaint, HHS had not
15 yet acted on the administrative claim. Except as expressly admitted, Defendant denies the
16 allegations of Paragraph 5.5.

17 5.6 Defendant admits only that Plaintiff's claims based on the facts set forth in the
18 SF-95 received by HHS on April 27, 2020 were timely filed. Except as expressly admitted, the
19 allegations in Paragraph 5.6 are denied.

20 **6. NEGLIGENCE**

21 6.1 The allegations in Paragraph 6.1 are legal conclusions to which no response is
22 required. To the extent a response is required, Defendant states that the law of Washington speaks
23 for itself and its application to the facts of this case will be determined by the Federal District
24 Court. Defendant denies liability in this case.

1 6.2 The allegations in Paragraph 6.2 are legal conclusions to which no response is
2 required. To the extent a response is required, Defendant states that the law of Washington speaks
3 for itself and its application to the facts of this case will be determined by the Federal District
4 Court. Defendant denies liability in this case.

5 6.3 Denied.

6 6.4 Denied.

7 **7. INFERENCE OF NEGLIGENCE**

8 7.1 Denied.

9 7.2 Defendant is without sufficient information to admit or deny the allegations in this
10 paragraph and therefore denies them.

11 **8. INFORMED CONSENT**

12 8.1 Denied.

13 **9. DAMAGES**

14 9.1 Denied.

15 9.2 Denied.

16 9.3 Denied.

17 9.4 Defendant is without sufficient information to admit or deny the allegations in this
18 paragraph and therefore denies them.

19 9.5 Denied.

20 9.6 Defendant is without sufficient information to admit or deny the allegations in this
21 paragraph and therefore denies them.

22 9.7 Denied.

23 //

1 **10. EXPENSES INCURRED**

2 10.1 Defendant is without sufficient information to admit or deny the allegations in this
3 paragraph and therefore denies them.

4 **11. WAIVER OF PRIVILEGE**

5 11.1 The allegations in Paragraph 11.1 are legal conclusions to which no response is
6 required. To the extent a response is required, Defendant denies that Washington State privilege
7 law applies to an FTCA case and states that Federal privilege law governs this matter.

8 The remainder of Plaintiff's Complaint contains a prayer for relief to which no response is
9 required. To the extent a response is required, Defendant denies Plaintiff's Prayer. Furthermore,
10 the United States denies all allegations not specifically admitted above.

11 **AFFIRMATIVE DEFENSES**

12 1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief
13 can be granted against Defendant, specifically including an informed consent claim.

14 2. Defendant complied with any duties of care it may have owed Plaintiff under
15 Washington state law.

16 3. Plaintiff's recovery is limited to the damages recoverable under the FTCA.

17 4. Plaintiff's recovery in this case is barred by the Washington law on comparative
18 negligence.

19 5. The damages alleged in the Complaint were not proximately caused by the
20 negligent or wrongful acts of an agent or employee of the United States.

21 6. Pursuant to 28 U.S.C. § 2678, Plaintiff is not entitled to a separate award of
22 attorneys fees.

23 7. To the extent Plaintiff is entitled to recover damages from the United States in this
24 action, which Defendant denies Plaintiff is entitled to, the United States is entitled to a credit or

1 set-off for any past or future benefits paid to or on behalf of or received by the Plaintiff, to the
2 extent allowed under federal and state common law and statutory law.

3 8. Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount
4 for pre-judgment interest against the United States.

5 9. To the extent Plaintiff is entitled to recover future economic damages from the
6 United States in this action, which Defendant denies Plaintiff is entitled to, the United States is
7 entitled to a judgment for periodic payment of those damages under Wash. Rev. Code § 4.56.260.

8 10. Defendant asserts that it has, or may have, additional affirmative defenses that are
9 not known to Defendant at this time but may be ascertained through discovery. Defendant
10 specifically preserves these and other affirmative defenses as they are ascertained through
11 discovery.

12 WHEREFORE, the United States respectfully requests that the Court dismiss all claims in
13 Plaintiff's Complaint and grant it such other relief as may be just and appropriate.

14 DATED this 9th day of May, 2022.

15 Respectfully submitted,

16 NICHOLAS W. BROWN
17 United States Attorney

18 s/ Whitney Passmore

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